

determined by the Area Superintendent or when Concessionaire has produced a sufficient amount of snow in accordance with Subparagraph 1(F) (“Machine-Made Snow”). Trails shall be configured to accommodate both beginner and intermediate-level skiers and shall be laid out as several connecting loops to allow skiers to bypass certain areas, resulting in shorter or easier routes. Concessionaire shall, at its sole cost and expense, and with the Area Superintendent’s written pre-approval, mark all Trails in accordance with their level of difficulty and shall install directional trail signs to regulate skier traffic. Prior to performing Routine Mechanical Grooming at the Area, Concessionaire shall submit to Department, for approval, a written description of the equipment and procedures Concessionaire proposes to use for Routine Mechanical Grooming at the Area. If approved in writing by Department, Concessionaire may use the approved equipment and the approved procedures for Routine Mechanical Grooming at the Area. Failure on the part of Concessionaire to obtain Department written pre-approval prior to performing Routine Mechanical Grooming at the Area or failure to perform Routine Mechanical Grooming in accordance with the procedures approved by Department shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

- C. Concessionaire shall be granted, as part of the Concession Operation, the exclusive right to charge a fee, pre-approved by Department in writing, for use of the Trails specifically designated in Exhibit B. Concessionaire shall be authorized to sell seasonal, daily and half day trail passes, which shall be sequentially numbered. Concessionaire shall submit to Department, for approval, a written list of prices for all trail passes. Concessionaire shall not commence any operations until Department approves the proposed prices in writing. Failure on the part of Concessionaire to obtain Department written pre-approval of the pricing for all trail passes shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.
- D. Concessionaire shall be authorized to rent and sell cross-country skis, snowshoes and related equipment, offer related services such as ski waxing and repairs, and offer lessons for a fee, on an hourly, half-day and daily basis. Concessionaire shall provide a sufficient number of trained and knowledgeable personnel and equipment to operate the Concession. Concessionaire shall maintain a minimum of one hundred fifty (150) sets of skis (various sizes), and an adequate supply of snowshoes (various sizes), and related equipment for rental. Concessionaire shall submit to Department, for approval, a written list of the types and prices of all rentals, lesson fees, and items for sale. Concessionaire shall not commence any operations until Department approves the proposed types and prices in writing. Failure on the part of Concessionaire to obtain Department written pre-approval of the types and prices of all rentals, lesson fees and items for resale, shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.
- E. Concessionaire shall be authorized to sell prepackaged food and non-alcoholic beverages. Concessionaire shall be solely responsible for obtaining all necessary State licenses, inspections and approvals before selling prepackaged food and non-alcoholic beverages. Failure on the part of Concessionaire to obtain and maintain the State licenses, inspections, and approvals for the sale of prepackaged food and non-alcoholic beverages shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10. Permissible types of prepackaged food and non-alcoholic beverages include, but are not limited to, a combination of items in each of the following categories: 1) Prepackaged Food: wrapped or bagged sandwiches, granola bars, protein bars, nuts, pretzels, candy, etc., 2) Prepackaged Non-Alcoholic Beverages: bottled or canned water, juice, soda, etc. Concessionaire may also sell coffee, tea or cocoa using individually packaged coffee, tea or cocoa products that can be prepared using hot water and/or a Keurig type dispenser. Concessionaire shall submit to Department, for approval, a written list of items and prices for all prepackaged food and non-alcoholic beverages prior to sale. Failure on the part of Concessionaire to obtain Department written pre-approval of the types and pricing of prepackaged food and non-alcoholic beverages, shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

F. Concessionaire shall be authorized to create and deposit snow using equipment designed to produce Machine-Made Snow (“Snowmaking Equipment”) on the Trails within the Area (the process of making snow shall hereinafter be referred to as “Snowmaking”) with written pre-approval of the Assistant Commissioner, State Parks, Forests & Historic Sites, or Designee, and the New Jersey Historic Sites Council (if applicable). Snowmaking is not required. However, if Concessionaire proposes to install or operate Snowmaking Equipment at the Area, Concessionaire must submit a snowmaking proposal to Department, in writing, at the address set forth in Paragraph 50 at least forty-five (45) days in advance of the proposed implementation. Concessionaire’s request must include a detailed description of the proposed Snowmaking operations, including, but not limited to:

1. A list of all equipment proposed to be used for Snowmaking;
2. A detailed description of the procedure Concessionaire proposes to use for Snowmaking;
3. A description of the weather and temperatures required for Snowmaking;
4. A map depicting the proposed Snowmaking trails, the proposed locations of the Snowmaking Equipment when installed, and locations of any impacts to the Area including, but not limited to, road closures and placement of signage;
5. A description of all proposed maintenance and/or other impacts to the trails proposed to be used for snowmaking;
6. A list of the applicable permits and/or approvals Concessionaire possesses or will obtain for Snowmaking;
7. A description of how Concessionaire will notify customers of the Concession Operation and the public that Machine-Made Snow is produced using non-potable water and is not safe to consume;
8. A description of the potential impacts to traffic at the Area and measures Concessionaire will take to implement proposed road closures (road barriers, signage, etc.);
9. The dates and start and end times Concessionaire proposes to conduct snowmaking;
10. A description of the water use requirements of the Snowmaking operation and how Concessionaire will monitor and report water consumption to Department;
11. A description of the utility services required for Snowmaking and the anticipated utility usage;
12. A description of how Snowmaking will enhance the public recreation opportunity at the Area and increase Concession revenue; and
13. Any and all additional information requested by Department.

If approved in writing by the Assistant Commissioner, State Parks, Forests & Historic Sites, or Designee, and the New Jersey Historic Sites Council (if applicable), Concessionaire may install and operate the approved Snowmaking Equipment only after obtaining the necessary permits and any additional approvals. Concessionaire shall not commence any Snowmaking operations without the written pre-approval of the Assistant Commissioner, State Parks, Forests & Historic Sites, or Designee, and the New Jersey Historic Sites Council (if applicable). The installation and/or operation of any Snowmaking Equipment without the written pre-approval of the Assistant Commissioner, State Parks, Forests & Historic Sites, or Designee, and the New Jersey Historic Sites Council (if applicable), shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10. Concessionaire shall be solely responsible for all liabilities and costs associated with the installation and operation of any Snowmaking Equipment on the Concession Premises and Trails. On or before April 10th of each year of operation, Concessionaire shall be solely responsible for removal of the Snowmaking Equipment and restoration of the Concession Premises and Trails to its condition prior to installation. This requirement shall include, but not be limited to, the removal of all equipment, structures, pipes, and utility connections above and below ground.

If Concessionaire proposes to conduct Snowmaking on trails within the Dryden Kuser Natural Area, Concessionaire may only conduct Snowmaking within the Cedar Swamp Picnic Area of the Dryden Kuser Natural Area, as depicted in Exhibit C, with Department written pre-approval. In accordance with the Dryden Kuser Natural Area Management Plan amended on December 14, 2023, Snowmaking may not be conducted within the Dryden Kuser Natural Area outside of the Cedar Swamp Picnic Area.

- G. Concessionaire may request to use, as part of the Concession Operation, Department-owned equipment located on the Concession Premises or at the Area, in accordance with Subparagraph 19(B).
- H. Concessionaire shall be authorized to direct customers of the Concession Operation and their vehicles to public parking areas at the Area (“Public Parking Areas”), as depicted in Exhibit D, to ensure that vehicles are parked in approved locations and in an orderly manner. Department shall not be responsible for directing parking traffic associated with the Concession Operation. Department does not guarantee availability of parking spaces for customers of the Concession Operation. Public Parking Areas at the Area are open to the public on a first come first served basis and cannot be reserved for customers of the Concession Operation. Concessionaire shall not give priority to customers of the Concession Operation while directing parking traffic. Furthermore, Concessionaire shall not prevent members of the public who are not customers of the Concession Operation from parking in any Public Parking Area at the Area.
- I. Concessionaire shall be solely responsible for the layout and printing of clear trail map(s) for distribution to all patrons. The trail map(s) shall depict the Trails set forth in Exhibit B and shall be updated as needed. A printer’s proof of the proposed trail map(s) shall be submitted to and approved by Department, in writing, prior to printing and distribution. Failure on the part of Concessionaire to obtain Department written pre-approval of the proposed trail map(s), shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.
- J. Concessionaire shall be solely responsible for prominently posting at the Concession Premises, and updating daily, current trail and weather conditions. Concessionaire shall also maintain a publicly accessible web-based system to post information and advertisements related to the Concession Operation.
- K. Any part of the Concession Operation taking place within the Dryden Kuser Natural Area, specifically designated in Exhibit B, including the Cedar Swamp Trail, must follow the Dryden Kuser Natural Area Management Plan (amended on October 16, 1995 and December 14, 2023), of which an unofficial courtesy copy of the Plan and Notices of Amendment are attached as Exhibit E. Routine Mechanical Grooming of the Trails within the Dryden Kuser Natural Area, is permitted when there is sufficient “natural snow” on the Trails for safe use by the public, as determined by the Area Superintendent. Snowmaking within the Dryden Kuser Natural Area is only permitted from December 1 through February 28/29, with Department written pre-approval in accordance with Subparagraph 1(F), within the Cedar Swamp Picnic Area as depicted in the Dryden Kuser Natural Area Management Plan amended on December 14, 2023. Within the Dryden Kuser Natural Area, Concessionaire shall not: widen Trails, mow Trails, trim or remove trees, create snow, transport natural or artificial snow onto the trails outside of the Cedar Swamp Picnic Area or undertake any other activity that is contrary to the Dryden Kuser Natural Area Management Plan as amended on December 14, 2023. Proposed removal of blow down(s) blocking the Trails must be reported to the Area Superintendent within twenty-four (24) hours of discovery and shall not be removed without the written pre-approval from the Area Superintendent.
- L. In accordance with Paragraph 17, Concessionaire must maintain a physical staff presence at the Concession Premises while the Concession is open for business and provide the necessary personnel to respond to all emergency situations. Failure on the part of Concessionaire to maintain a staff presence at the Concession Premises while the Concession is open for business, and provide the necessary personnel to respond to all emergency situations, shall constitute a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.
- M. Concessionaire shall use the Concession Premises and Trails solely for the purposes set forth above and is strictly prohibited from selling or permitting the sale or consumption of any alcoholic beverages thereon. In addition, the smoking of tobacco products, vaping and/or use of electronic smoking devices by Concessionaire, Concessionaire’s employees or customers is strictly prohibited at the Area. Concessionaire shall be solely responsible for monitoring and informing all customers that alcohol and smoking is strictly prohibited at the Area.

Further, Concessionaire shall display signage at the Concession Premises that will inform the customers of the State law prohibiting alcohol and smoking at the Area. Failure to comply with the requirements set forth in this Paragraph shall constitute a material breach of this Agreement subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

- N. Concessionaire shall not install, operate, or allow the installation or operation of vending machines on the Concession Premises.
- O. Concessionaire's operation and this Agreement shall not be construed so as to affect the privileges accorded to the public's use of the Area. Concessionaire's operation shall not be construed so as to restrain or prevent individual persons or groups of persons from bringing their own recreational equipment, food and beverages into the Area. However, Concessionaire shall be granted the exclusive right to charge patrons a fee for use of the Trails set forth in Exhibit B.
- P. Concessionaire's status shall be that of a licensee. Concessionaire, whose term on the Concession Premises shall be seasonal in nature, will not, in any way whatsoever, be granted or conveyed any permanent easement, lease, fee, or other interest in the Concession Premises.
- Q. Department reserves the right to issue Special Use Permits for use of the Area. Department shall coordinate with Concessionaire to minimize interruption of the Concession Operation and impacts to the Concession Premises.

2. TERM

- A. The "Initial Term" of this Agreement shall be from the "Effective Date of this Agreement's Initial Term," as defined in Subparagraph 3(A), through April 10, 2027. Subject to the requirements of Subparagraph 2(B), Concessionaire may request, in writing, a Renewal of this Agreement, which, if granted, shall start on November 21, 2027 and shall end on April 10, 2030 ("**First (1st) Renewal Term**"). **If Concessionaire successfully produces snow in a manner that enhances public use and enjoyment of the Concession Premises for at least two (2) consecutive seasons, Concessionaire may request, in writing, a second Renewal of this Agreement ("Second (2nd) Renewal Term"). If granted by the Department, the Second (2nd) Renewal Term shall start on November 21, 2030 and shall end on April 10, 2034.** The grant of a renewal request is in the sole discretion of Department. Department may grant no more than **one-two (12)** subsequent Renewal Terms following the Initial Term of this Agreement. **Furthermore, the determination of whether Concessionaire has successfully produced snow in a manner that enhances public use and enjoyment of the Concession Premises is in the sole discretion of Department.** Department reserves the right to suspend Concessionaire's operations and/or terminate this Agreement for any material breach in accordance with the terms and conditions set forth in Paragraphs 9 and 10. Furthermore, failure on the part of Concessionaire to submit Monthly Reports or the Annual Report, as described in Paragraphs 12 and 13, when due, shall constitute a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.
- B. If Concessionaire wishes to renew this Agreement, it must submit a request, in writing, to the address set forth in Paragraph 50. Any such request must be received on or before March 1, 2027 **for the First (1st) Renewal Term and on or before March 1, 2030 for the Second (2nd) Renewal Term**. Should Concessionaire fail to submit a written renewal request on or before March 1, 2027 **for the First (1st) Renewal Term and March 1, 2030 for the Second (2nd) Renewal Term**, this Agreement shall expire at the conclusion of this Agreement's Initial Term, in accordance with the terms and conditions set forth in Paragraph 10.

3. EFFECTIVE DATE

- A. For the purposes of this Agreement, the Effective Date of this Agreement's Initial Term shall be the date this Agreement is fully executed by Department.

B. For the purposes of this Agreement, the Effective Date for the commencement of any Renewal Term shall be the date on which the last of the following has occurred:

- (i) The Renewal Agreement is signed on behalf of Concessionaire and Department;
- (ii) Department dates the Renewal Agreement and forwards a copy to Concessionaire;
- (iii) The required Certificate(s) of Insurance under this Agreement is or are received by Department;

4. CONCESSION PAYMENTS AND INCREASE

- A. **Concession Payment:** For the first year of the Initial Term of this Agreement, Concessionaire shall pay Department a minimum Concession Payment of One Thousand (\$1,000.00) Dollars in accordance with the Concession Payment Schedule set forth in Exhibit F as consideration for the Concession, license and privilege granted. For any following years of the Initial Term and Renewal Term(s), Concessionaire shall pay Department in accordance with the Concession Payment Schedule set forth in Exhibit F.
- B. **Variable Fee:** Except as provided in Subparagraph 4(C), in addition to the Concession Payment, Concessionaire shall pay Department a Variable Fee of ten percent (10%) of the Total Gross Receipts, excluding New Jersey State Sales Tax, for each month of the Concession Operation. The Variable Fee shall be paid on or before the 10th of the following month with the submission of the Monthly Reports required under Paragraph 12.
- C. **Adjustment of Variable Fee:** If Snowmaking Equipment is put into operation with written pre-approval from the Assistant Commissioner, State Parks, Forests & Historic Sites, or Designee, and the New Jersey Historic Sites Council (if applicable), Concessionaire may request a reduction of the Variable Fee to eight (8%) percent of the Total Gross Receipts, excluding New Jersey State Sales Tax. Department shall grant such reduction if Concessionaire demonstrates to the Department's satisfaction that Snowmaking has been successfully deployed in a manner that will enhance public use and enjoyment of the Concession Premises, and will continue as needed during the Period of Operation. The Variable Fee shall be paid with the submission of the Monthly Reports required under Paragraph 12.
- D. For each Period of Operation of this Agreement, Concessionaire shall pay Department a utility payment(s) in accordance with Paragraph 25 and the Concession Payment Schedule set forth in Exhibit F. Utility payments shall be made by separate check.
- E. For each Period of Operation of this Agreement, Concessionaire shall be required to pay additional compensation to Department if Concessionaire receives approval from Department to extend the Period of Operation in accordance with Paragraph 8.
- F. All payments shall be submitted by check made payable to **"Treasurer - State of New Jersey"** and be received on or before the scheduled payment date to:
- Department of Environmental Protection
Office of Transactions and Public Land Administration
Public Land Administration Section
PO Box 420, Mail Code 401-07
Trenton, New Jersey 08625-0420
- G. If Concessionaire fails to pay any payment at such time and in such manner as specified herein and in Exhibit F, such failure shall constitute a material breach of this Agreement subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.
- H. Department may, at its discretion, require Concessionaire to make all payments for the Initial Term of this Agreement by certified or cashier's check only.

- I. Any payment not made on or before the tenth (10th) day of the month shall be considered past due. A late fee of five percent (5%) of the total past due amount shall be assessed on the tenth (10th) day after the payment becomes past due and every thirty (30) days thereafter.
- J. In the event any check for payment is returned to Department, all future payments must be made by certified or cashier's check only.
- K. Beginning on the second (2nd) year of the Initial Term of this Agreement, if any, the Concession Payment shall be increased by three (3%) percent annually for each of any remaining years of the Initial Term and the Renewal Term(s), if any. Beginning on the third (3rd) year of the Initial Term of this Agreement, if any, Department may increase the Concession Payment and/or Variable Fee pursuant to a Compensation Analysis performed in accordance with Paragraph 5. The Concession Payment and/or Variable Fee for any following years will be calculated by Department and shall be rounded up to the closest dollar.

5. COMPENSATION ANALYSIS

- A. **Initial Term:** A Compensation Analysis may be performed by the Department after the second (2nd) year of this Agreement's Initial Term. At such time, based on the reported Total Gross Revenue, performance of the Concession, and/or Department's existing rates for similarly-performing operations, Department may choose to increase the Concession Payment and/or Variable Fee, for the following year of the Initial Term, if any.
- B. **First Renewal Term:** A Compensation Analysis may be performed after the second (2nd) year of this Agreement's First Renewal Term. At such time, based on the reported Total Gross Revenue, performance of the Concession, and/or Department's existing rates for similarly-performing operations, Department may choose to increase the Concession Payment and/or Variable Fee for the following years of the this Renewal Term Agreement, if any.

C. Second Renewal Term: A Compensation Analysis may be performed after the second (2nd) year of this Agreement's Second (2nd) Renewal Term. At such time, based on the reported Total Gross Revenue, performance of the Concession, and/or Department's existing rates for similarly-performing operations, Department may choose to increase the Concession Payment and/or Variable Fee for the following years of this Agreement, if any.

6. HOURS OF OPERATION AND LIMITATIONS

- A. During the first year of the Initial Term of this Agreement, Concessionaire shall open and operate the Concession in accordance with Subparagraph 6(C) from as soon as practicable after the Effective Date of this Agreement's Initial Term, through March 31, 2025 ("Period of Operation"). During the second (2nd) and third (3rd) years of the Initial Term of this Agreement, Concessionaire shall open and operate the Concession in accordance with Subparagraph 6(C) from December 1st through March 31st ("Period of Operation"). Concessionaire shall be authorized to enter the Concession Premises ten (10) calendar days prior to December 1st and shall vacate and remove all Concessionaire-owned possessions, supplies, goods and equipment from the Concession Premises within the ten (10) calendar days after March 31st. The ten (10) calendar days prior to December 1st and the ten (10) calendar days after March 31st, are solely to allow for Concession set-up and take-down, respectively. Concessionaire shall not be authorized to enter the Concession Premises prior to the ten (10) day set-up period or after the ten (10) day take-down period, as described in this Paragraph, without Department written pre-approval.
- B. During the Renewal Term(s) of this Agreement, if any, Concessionaire shall open and operate the Concession in accordance with Subparagraph 6(C) from December 1st through March 31st ("Period of Operation"). Concessionaire shall be authorized to enter the Concession Premises ten (10) calendar days prior to December 1st and shall vacate and remove all Concessionaire-owned possessions, supplies, goods and equipment from the Concession Premises within the ten (10) calendar days after March 31st. The ten (10) calendar days prior to December 1st and the ten (10) calendar days after March 31st, are solely to allow for Concession set-up and take-down, respectively. Concessionaire shall not be authorized to enter the Concession Premises

prior to the ten (10) day set-up period or after the ten (10) day take-down period, as described in this Paragraph, without Department written pre-approval.

- C. The Concession shall be open for business Sunday through Saturday during the Period of Operation for the Initial Term and Renewal Term(s), if any. Concessionaire shall open and operate the Concession during the Period of Operation between the "Core Business Hours" of 9:00 a.m. through 4:00 p.m. when trail and weather conditions permit, as determined by the Area Superintendent. The Concession must be prepped, fully operational, and capable of serving patrons during the Period of Operation and during the Core Business Hours, when trail and weather conditions permit (as determined by the Area Superintendent). Department reserves the right to have Concessionaire complete a daily attendance log at a location determined by Department.
- D. Failure on the part of Concessionaire to open for business during the Period of Operation and during the Core Business Hours, when trail and weather conditions permit (as determined by the Area Superintendent), shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10. Concessionaire may request approval from the Area Superintendent to temporarily close the Concession during the Core Business Hours, for reasons other than trail and weather conditions, in case of emergency or other exigent circumstances. A request to close the Concession during the Core Business Hours for reasons other than trail and weather conditions must be submitted to the Area Superintendent, in writing, at the address set forth in Paragraph 50 at least forty-eight (48) hours in advance of the requested closure. Concessionaire shall provide written justification for all temporary closure requests. Approval of a temporary closure request shall be at the sole discretion of the Area Superintendent and will only be considered if requested on a limited and infrequent basis. Requests for recurring or repeated closures will not be approved by the Area Superintendent and may impact the Department's decision to renew this Agreement for a-any Renewal Term(s). Pursuant to Paragraph 42, payment abatements will not be given for any reason, including for Concessionaire-requested closures approved by the Area Superintendent.
- E. The Area Superintendent shall be the sole authority to determine whether an area of High Point State Park affecting the Concession Operation will have a delayed opening or be closed due to inclement weather or otherwise. Department is not responsible to Concessionaire for any loss or damage caused by such determination.
- F. Concessionaire shall be responsible for adequate staffing and operating the Concession during the Period of Operation and during the Core Business Hours. Unless approval for a temporary closure has been granted by the Area Superintendent pursuant to Subparagraph 6(D), failure on the part of Concessionaire to open the Concession during the Period of Operation and during the Core Business Hours shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.
- G. Concessionaire shall be accessible by phone during the Core Business Hours at a number to be provided to Department and made publicly available at the Concession Premises and in any advertisement of the Concession Operation. Failure on the part of Concessionaire to be accessible by phone during the Core Business Hours shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.
- H. Concessionaire shall also provide Department with a private number where Concessionaire can be reached at any time.

7. ALTERNATE HOURS OF OPERATION

Concessionaire may request authorization to extend the hours of operation beyond the Core Business Hours, by opening before 9:00 a.m. and/or closing after 4:00 p.m. All requests to extend hours of operation must be made in writing to Department at the address set forth in Paragraph 50 ten (10) calendar days in advance of the proposed effective date. Concessionaire shall not implement the alternate hours of operation without written authorization from Department.

8. EXTENSION OF THE SEASON

Concessionaire may request to extend the Period of Operation either before December 1st and/or after March 31st. All requests must be made in writing to Department at the address set forth in Paragraph 50 fifteen (15) calendar days in advance of the proposed implementation. Approval of this request shall be within Department's sole discretion. Concessionaire shall be deemed to not have permission to extend the Period of Operation without written approval from Department. Concessionaire shall pay additional compensation to Department for the extended period. Department will calculate the additional compensation on a monthly basis or prorated by day and notify Concessionaire of the amount owed and the due date. The additional compensation must be received by Department in advance of the start of operations for the extended period. Concessionaire shall also pay Department a Variable Fee payment for the extended period in accordance with Subparagraphs 5(B) and 5(C). The additional payments must be submitted by check made payable to "Treasurer – State of New Jersey" and sent to the address set forth in Subparagraph 5(F).

9. SUSPENSION OF OPERATIONS

Concessionaire shall, at the direction of Department, immediately suspend, delay or interrupt Concessionaire's operation of all or any part of the Concession Premises and/or Trails for such period of time as Department may determine to be appropriate to protect the Concession Premises and/or Trails from damage and/or protect public health, safety, and welfare due to the occurrence of hazardous work conditions, emergency conditions, and/or any other cause including, but not limited to, Concessionaire's failure to perform any of the covenants, agreements, and conditions contained in this Agreement on its part to be performed. Concessionaire hereby waives any claim, and Department shall not be liable to any party claiming through Concessionaire, for damages, payment abatement, or compensation as a result of Department's actions under this Paragraph or this Agreement. Department's suspension of Concessionaire's operations shall be in addition to any other right or remedy available by law or in equity.

10. TERMINATION

- A. Concessionaire shall exercise direct and personal supervision of the operation of the Concession Premises and Trails designated by Department in Exhibits A and B. Failure to exercise such supervision and/or the existence of any condition at the Area or in the operation of the Concession which Department determines to be in violation of the terms and conditions of this Agreement shall be considered to be a material breach in which event Department may terminate this Agreement by written notice sent by regular and certified mail return receipt requested. Upon receipt of written notice of termination for violation, Concessionaire shall have such period of time as provided therein to cure such violation. If such violation is not cured within the period designated in said notice, termination shall, in the sole discretion of Department, be effective at the conclusion of the designated period.
- B. Without limiting the scope of Subparagraph A of this Paragraph, this Agreement shall automatically terminate in the event of Concessionaire's failure to pay, when due, any compensation or other sums or assessments to be paid by Concessionaire under this Agreement and the continuation of such failure to pay for a period of five (5) calendar days after Concessionaire's receipt of written notice thereof from Department.
- C. Department expressly reserves the right to terminate this Agreement without notice in cases of emergency or where there exists or may exist risk to public health, safety, or welfare, as determined by Department in its sole discretion.
- D. Notwithstanding any provision or language to the contrary, Department may terminate this Agreement, in whole or in part, solely for the convenience of the State, by ninety (90) calendar days written notice to Concessionaire sent by regular and certified mail return receipt requested. Upon receipt of such notice, Concessionaire may choose for such termination to become effective immediately, or may instead continue to operate the Concession in accordance with the terms and conditions of this Agreement for a period not to exceed ninety

(90) calendar days after receipt of the notice or until the end of the current Period of Operation, whichever occurs sooner.

- E. Concessionaire may terminate this Agreement by ninety (90) calendar days written notice to Department sent by regular and certified mail return receipt requested. Upon receipt of such notice, Department may choose for such termination to become effective immediately. Otherwise, Concessionaire shall continue to operate the Concession in accordance with the terms and conditions of this Agreement for a period not to exceed ninety (90) calendar days after receipt of the notice, until the end of the current Agreement Period of Operation, or upon selection by Department of a new Concessionaire, whichever occurs sooner.
- F. If at any time during the Initial Term or Renewal Term(s) of this Agreement, Concessionaire shall make any assignment for the benefit of creditors or be decreed insolvent or bankrupt according to law, or if a receiver shall be appointed for Concessionaire, then Department may terminate this Agreement immediately by notice served upon the Concessionaire and the assignee, receiver, trustee or other person in charge, but such termination shall not release or discharge any payment or obligation then owed by Concessionaire to Department hereunder.
- G. Termination of this Agreement by either Department or Concessionaire, as herein provided, shall not release or discharge any payment obligation or liability owed by one to the other under the terms and conditions of this Agreement as of the date of such termination.
- H. Upon the expiration or termination of this Agreement, Department may at once re-enter and remove any and all persons occupying the Concession Premises and Trails. If Concessionaire fails to remove any property lawfully belonging to and removable by Concessionaire upon the expiration or termination of this Agreement, Department may appropriate same to its own use without allowing any compensation therefor, or may remove same at the expense of Concessionaire. In the event that Concessionaire removes any property or tangible things of value which belong to the Department or the public, Concessionaire hereby covenants to pay any and all damages which may be caused to the property, a thing of value, of Department by this removal.
- I. Any Department-initiated termination of this Agreement for cause or convenience pursuant to this Paragraph shall be considered sufficient grounds for Department, at its sole discretion, to terminate, upon thirty (30) calendar days written notice to Concessionaire, any and all other Concession Agreements between Department and Concessionaire. Any Department-initiated termination for cause or convenience of another Concession Agreement between Department and Concessionaire shall be considered sufficient grounds for Department, at its sole discretion, to terminate this Agreement, upon thirty (30) calendar days written notice to Concessionaire.

11. **ELECTRONIC SUBMISSIONS**

Concessionaire must have the capacity to send and receive electronic submissions and communications as a pre-condition and continuing requirement of this Agreement. For purposes of this Agreement, "Electronic Submissions" shall only include the transmission of documents by email. Concessionaire shall comply with the following terms and conditions:

- A. Concessionaire shall electronically submit all reports, including, but not limited to, Monthly Reports and Annual Reports required under Paragraphs 12 and 13, by email to: PublicLandAdministration@dep.nj.gov. Failure on the part of Concessionaire to submit reports electronically shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.
- B. Concessionaire shall maintain, and monitor on a daily basis, an active email address, designated for this Agreement and report any change to the email address during any Term of this Agreement. Failure on the part of Concessionaire to maintain and monitor the active email address, designated for this Agreement, shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

12. MONTHLY REPORT

- A. A Monthly Report shall be submitted within ten (10) calendar days of the end of each calendar month of the Period of Operation. Each Monthly Report shall be signed, dated, and certified by Concessionaire, Concessionaire's Bookkeeper, or Concessionaire's Accountant, and contain a Statement of the daily and monthly totals from the following categories, derived by Concessionaire from operation of the Concession during the previous month:

1. Total Number of Trail Passes Sold;
2. Total Number of Equipment Rentals;
3. Total Number of Lessons Sold;
4. Total Gross Revenue excluding New Jersey State Sales Tax, including a summary of Total Gross Revenue derived from the following categories:
 - a. Trail pass sales;
 - b. Equipment rentals;
 - c. Equipment sale and/or resale;
 - d. Lessons; and
 - e. Food and non-alcoholic beverage sales;
5. Total New Jersey State Sales Tax collected;
6. Hours of use of the Snowmaking Equipment;
7. Quantity of snow produced, measured in inches;
8. Any and all additional information requested by Department.

Each Monthly Report shall be based on the daily "Z" tapes or Point-of-Service (POS) device equivalent for that same month showing each day's sales activity. Failure on the part of Concessionaire to provide the Monthly Report, when due, shall constitute a material breach of this Agreement subject to Suspension of Operations and/or Termination, in accordance with the terms and conditions set forth in Paragraphs 9 and 10. Concessionaire shall provide Department with any additional written clarification and/or information necessary to confirm the accuracy of any or all of Concessionaire's Monthly Reports.

- B. The signed, dated and certified Monthly Report must be submitted, in the Department-approved format, within ten (10) calendar days of the end of each calendar month of the Period of Operation.

13. ANNUAL REPORT

- A. Concessionaire shall submit to Department, no later than June 1st following each Period of Operation this Agreement is in effect, an Annual Financial Statement ("Annual Report") for the prior Period of Operation. Each Annual Report shall be signed, dated, and certified by Concessionaire, Concessionaire's Bookkeeper, or Accountant, and contain the following:

1. Total Number of Trail Passes Sold;
2. Total Number of Equipment Rentals;
3. Total Number of Lessons Sold;
4. Total Gross Revenue excluding New Jersey State Sales Tax, including a summary of Total Gross Revenue derived from the following categories:
 - a. Trail pass sales;
 - b. Equipment rentals;
 - c. Equipment sale and/or resale;
 - d. Lessons; and
 - e. Food and non-alcoholic beverage sales;
5. Total New Jersey State Sales Tax collected;
6. Operating Expenses;
7. Net Profit/Loss; and
8. Any and all additional information requested by Department

Failure on the part of Concessionaire to submit the Annual Report, when due, shall constitute a material breach of this Agreement subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10. Concessionaire

shall provide Department with any additional clarification and/or information necessary to confirm the accuracy of Concessionaire's Annual Report.

- B. The signed, dated and certified Annual Report must be submitted in the Department-approved format no later than May 1st following each Period of Operation this Agreement is in effect.

14. **RECORDS AND AUDIT**

- A. Concessionaire shall maintain complete, accurate, and detailed accounting records of all transactions pertaining to the Concession Operation covered by this Agreement that will enable Concessionaire to prepare financial statements in accordance with generally accepted accounting principles. Concessionaire shall make such records available to any authorized representative of Department upon request, as often as it is deemed necessary by Department, to determine the effectiveness of the financial management system and internal procedures that have been established by Concessionaire, and to ensure compliance with the terms and conditions of this Agreement and that the financial statements and reports present fairly the results of Concessionaire's operations pursuant to this Agreement. Failure to do so shall be a material breach of this Agreement. Said records shall be maintained and made available to Department and the State of New Jersey for a period of seven (7) years after the termination or expiration of this Agreement.
- B. Concessionaire shall utilize a cash register as part of the Concession Operation. Concessionaire may request Department approval to also or alternatively utilize a Point of Service (POS) device and/or POS software as part of the Concession Operation. If approved in writing by Department, Concessionaire may then utilize a POS device and/or POS software as part of the Concession Operation. Any use of a POS device as part of the Concession Operation without the required prior Department-written approval shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the Terms and Conditions set forth in Paragraphs 9 and 10.
- C. All sales shall be recorded by means of cash registers or Department-approved POS devices and/or POS software that publicly display the amount of each sale and automatically issue a customer receipt or certify the amount recorded on a sales slip. Said cash registers, Department-approved POS devices, and/or Department-approved POS software shall, in all cases, have locked-in sales totals and transactions counters that constantly accumulate and that cannot, in either case, be reset. In addition, such cash registers must have a tape located within the register upon which transaction numbers and sales details are imprinted. Beginning and ending cash register, Department-approved POS device, or POS software readings shall be recorded on a daily basis. In the event of technical or electrical failure of the cash register, Department-approved POS device, or Department-approved POS software, Concessionaire shall record all transactions by hand and issue a sequentially pre-numbered customer receipt in like manner. Failure to have a working cash register, Department-approved POS device, Department-approved POS software, or hand-issued receipt process, shall be a material breach of this Agreement subject to immediate Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

Each cash register, Department-approved POS device, or Department-approved POS Software must have the following:

- Dual Tape/Readable tape or electronic report that records individual sales and total sales
- The ability to generate a receipt (customer must be offered a paper of electronic receipt)
- Customer Display
- Continuous grand total

In addition, each cash register must have the following:

- Cumulative "Z" counter
- Current printed date on detail tape

15. DAILY RECEIPTS

- A. Under this Agreement, Concessionaire shall be required to maintain a daily record of all gross receipts derived from the Concession Operation. This record shall be available at all times. Concessionaire shall, upon request by Department, provide a breakdown and accounting of all sales activity for each day. Failure on the part of Concessionaire to maintain daily receipts shall constitute a material breach of this Agreement subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.
- B. All cash, credit and debit payments received by Concessionaire shall be deposited into a separate account or fund maintained solely for the subject Concession Operation, through which all financial transactions (including, but not limited to, deposits, withdrawals, and purchases) must pass.

16. PRICES

Prices for all rentals, services, fees, and items for sale or resale, including, but not limited to, ski, snowshoe and related equipment sales and rentals, trail passes, lessons, prepackaged food and non-alcoholic beverages, and all other items for sale and or resale, shall be submitted to and approved by Department in writing before any proposed price can become effective. Proposed prices to be charged must be submitted in writing to Department at the address set forth in Paragraph 50 and approved, in writing, by Department prior to commencement of any Period of Operation. All prices shall remain in effect unless otherwise modified and re-approved in writing by Department. All changes in pricing will require the submission of a new price list for all items (not just those being changed) and a written justification for each item Concessionaire is requesting Department's approval to change or modify. Requests to change or modify an approved price list must be made in writing to Department at the address set forth in Paragraph 50 at least ten (10) calendar days in advance of the proposed implementation. No price changes are to take effect without the written pre-approval of Department. All prices shall be properly displayed in prominent places at all times. Price signage must be professional in appearance, neat, and made of weather-proof materials.

17. STAFF

- A. Concessionaire shall, at all times during each Term of this Agreement, engage a sufficient number of reliable, competent, and qualified paid and/or volunteer staff of legal age to operate the Concession, and to ensure the safety of customers of the Concession Operation and the protection of the Concession Premises. Concessionaire must provide a minimum of two (2) adult staff members, at least eighteen (18) years of age, at all times while the Concession is open for business. A minimum of one (1) adult staff member must have the capability to perform a skiing industry-standard sweep of all Trails to determine if there are any customers remaining on the Trails, overdue rentals, and/or cars remaining in the parking lot at closing time. If Department determines that Concessionaire has not provided a sufficient number of reliable, competent, and qualified paid and/or volunteer staff of legal age to operate the Concession, and to ensure the safety of customers of the Concession Operation and the protection of the Concession Premises, Concessionaire shall, immediately upon receipt of email or written notification from Department, correct the staffing deficiencies described in said notice. Notwithstanding the above, Concessionaire, not the Department, is solely responsible for the staffing of the Concession Operation, and under no circumstances shall Department be liable for any injuries or damage arising from the staffing of the Concession Operation and/or the failure of Department to notify Concessionaire that the staffing of the Concession Operation is inadequate. Concessionaire shall not be entitled to any payment abatement due to any suspension or other action taken by Department under this Paragraph, and Department shall not be liable to Concessionaire, or any party claiming through Concessionaire, for any claim, liability, or damages resulting from said action by Department.
- B. Concessionaire must provide a minimum of one (1) concession employee that is Red Cross certified in the proper administration of CPR and First Aid, at the Concession Premises and/or Area, while the Concession is open for business and while customers of the Concession Operation are using the Trails. Concessionaire shall not commence any operations and/or

shall immediately suspend the Concession Operation and remove all customers of the Concession Operation and rented equipment from the Trails if a minimum of one (1) concession employee certified in CPR and First Aid is not physically present at the Concession Premises and/or Area. Prior to commencement of each Period of Operation, Concessionaire shall submit to Department documentation demonstrating that a minimum of one (1) concession employee is Red Cross certified in the proper administration of CPR and First Aid, and will be present at the Concession Premises and/or Area while the Concession is open for business and while customers of the Concession Operation are using the Trails. Failure on the part of Concessionaire to submit the required documentation and maintain the required staff presence at the Concession Premises and/or Area while the Concession is open for business and while customers of the Concession Operation are using the Trails shall constitute a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

- C. All Concession employees must wear uniform apparel and name tags to identify and distinguish them as Concession employees. The type of uniform apparel and identification shall be pre-approved by the Area Superintendent, prior to the start of any Period of Operation of this Agreement. Failure on the part of Concessionaire to comply with the uniform requirement shall be a material breach of this Agreement subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

18. COMPLIANCE AND PERFORMANCE EVALUATION

Two (2) Mandatory Compliance and Performance Evaluation Meetings shall be conducted during each Period of Operation of this Agreement. Additional meetings may be scheduled at the discretion of Department to ensure Concessionaire's effectiveness and compliance. The meetings shall review all aspects of the Concession Operation, ensuring that quality public services are being provided on a continuing basis in accordance with this Agreement, that operational problems/concerns are addressed on a timely basis, and that all terms and conditions are clearly understood. The meetings shall be held on site with Department-designated State Park Service staff representative(s), the on-site concession manager, and a management/supervisory representative of Concessionaire's firm. A report form shall be utilized to document the meeting, and to identify any deficiencies and the corrective action required. A copy of the completed report form shall be provided to the on-site concession manager or the management/supervisory representative of Concessionaire's firm. The Mandatory Compliance and Performance Evaluation Meetings shall be held as follows:

- Meeting #1 - Prior to commencement of the Period of Operation.
- Meeting #2 - Within ten (10) calendar days after the last approved day of the Period of Operation.

19. EQUIPMENT

- A. Concessionaire shall, at its sole cost and expense, be responsible for providing any and all equipment necessary for the Concession Operation, including but not limited to, rental items, trail signs, and grooming equipment. Concessionaire shall obtain written approval from Department prior to the use or installation of any equipment on the Concession Premises and/or Trails. Department shall not be responsible for the damage, loss, or maintenance of any equipment installed by Concessionaire. The use or installation of any equipment without written pre-approval from Department shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.
- B. Concessionaire may request Department written pre-approval to use, as part of the Concession Operation, Department-owned equipment located on the Concession Premises or at the Area, including, but not limited to the pump house located at the north end of Lake Marcia, as depicted in Exhibit A ("Pump House"), and the two Department-owned water pumps located inside the Pump House ("Lake Marcia Pumps"). Requests to use Department-owned equipment must be made in writing to Department at the address set forth in Paragraph 50 at least fifteen (15) calendar days in advance of the proposed implementation. Concessionaire's

request must include a list of the Department-owned equipment Concessionaire proposes to use, a description of how the Department-owned equipment will be used, and a maintenance plan for the Department-owned equipment. Concessionaire shall only request to use the Lake Marcia Pumps for Snowmaking purposes, as part of a Snowmaking proposal submitted to the Department under Subparagraph 1(F). The Lake Marcia Pumps are provided “as is” and Department makes no guarantees regarding their condition or their suitability for snowmaking operations. Concessionaire shall be solely responsible for maintaining all State-owned equipment installed on the Concession Premises and Trails for use by Concessionaire. Failure on the part of Concessionaire to obtain Department written pre-approval prior to using Department-owned equipment as part of the Concession Operation shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

- C. In accordance with Subparagraph 1(F), Concessionaire shall be authorized to create and deposit snow using Snowmaking Equipment on the Trails within the Area with written pre-approval of the Assistant Commissioner, State Parks, Forests & Historic Sites, or Designee, and the New Jersey Historic Sites Council (if applicable). Concessionaire shall not install, operate, or allow the installation or operation of any Snowmaking Equipment without the written pre-approval of the Assistant Commissioner, State Parks, Forests & Historic Sites, or Designee, and the New Jersey Historic Sites Council (if applicable).
- D. Concessionaire shall, at its sole cost and expense be responsible for providing all firewood to be used for the fireplace on the Concession Premises, and maintaining the fireplace chimney. The fireplace chimney must be cleaned, inspected, and approved by the Area Superintendent no later than April 10th each Period of Operation this Agreement is in effect. Department shall not be responsible for any closure of the fireplace by the State Fire Marshal.
- E. For the Initial Term and Renewal Term(s), if any, of this Agreement, the storage of supplies, goods, or equipment is only permitted at the Concession Premises, as designated in Exhibit A, unless otherwise approved in writing by the Area Superintendent. Concessionaire shall not be authorized to store any Concessionaire-owned possessions, supplies, goods, or equipment related to the operation of the Concession outside any Period of Operation of this Agreement. Concessionaire shall remove all Concessionaire-owned possessions, supplies, goods, and equipment related to the operation of the Concession from the Area within the designated ten (10) day “take-down” period set forth in Subparagraph 6(A). Department shall not be responsible or liable for any loss or theft of possessions, supplies, goods, or equipment belonging to Concessionaire or Concessionaire’s customers.
- F. Department shall not be responsible for any damages to or loss of equipment, goods, or services resulting from equipment failure. As required by Paragraph 36, Concessionaire shall obtain insurance coverage for possible losses including, but not limited to, equipment failure, theft, vandalism or weather event.

20. REPAIR

Concessionaire shall, prior to the commencement of the Concession Operation under this Agreement, provide to Department a written concession equipment maintenance plan for the State-owned equipment located on the Concession Premises and Trails, together with a schedule for preventative maintenance and a report on maintenance completion and equipment condition. Failure to comply with this preventative maintenance schedule shall result in Concessionaire being responsible for all repairs and/or replacement of equipment. The review and Department inspection of the Concession Premises, Trails, and its equipment will be conducted during routine inspection of the Concession Premises and Trails and as a part of the Mandatory Compliance and Performance Evaluation Meetings.

21. MAINTENANCE OF CONCESSION PREMISES AND TRAILS

- A. Concessionaire shall preserve and maintain the Concession Premises and Trails in good and clean condition, reasonable wear and tear excepted. Concessionaire is solely responsible for the maintenance and cleanliness of the Concession Premises and Trails.

- B. Concessionaire shall maintain all Trails approved by Department for public use, for which a fee is charged, in a manner that is reasonably safe for patrons of all skill levels. With the exception of Routine Mechanical Grooming of the Trails, which requires separate Department written pre-approval in accordance with Subparagraph 1(B), all maintenance including, but not limited to, mowing of Trails and trimming or removal of trees shall be pre-approved in writing by the Area Superintendent before each occurrence.
- C. Concessionaire shall be responsible for removing snow and ice from the patio at the Concession Premises that is used to access the Concession Premises, and all adjacent walkways. Area staff shall be responsible for the plowing and sanding of High Point State Park's roads, as well as the main parking lot of the Concession Premises, subject to availability of appropriated funds, in accordance with Paragraph 22.
- D. Upon the expiration of each Period of Operation or termination of this Agreement, Concessionaire shall deliver up peaceable possession of the Concession Premises and Trails to Department in as good and clean condition as the Concession Premises and Trails were made available at the commencement of each Period of Operation, reasonable wear and tear excepted. In the event that Concessionaire does not deliver up possession as herein provided, Department may restore the Concession Premises and Trails to such condition, and the cost thereof shall be paid by Concessionaire to Department within ten (10) calendar days of Department's written demand for payment.
- E. The Trails set forth in Exhibit B shall not be expanded or widened without prior written approval of Department. Any requests to expand or widen the Trails shall be submitted to Department in writing and must identify the exact work to be completed. Concessionaire acknowledges that trail expansion and/or widening requests may require environmental reviews by, and permits from, Department, and, even if approvable, may not be feasible to approve during the same Period of Operation in which they are requested. Approval of any trail expansion or widening requests is in the sole discretion of Department.

22. AVAILABILITY OF FUNDS

Concessionaire expressly acknowledges that the Concession Premises and Trails are provided "as is." Any obligation of Department to repair or maintain the Concession Premises, Trails, and/or other part of the Area is contingent upon the availability of appropriated funds and receipt of revenues from which such repair or maintenance can be funded. Department shall have no obligation for such repair or maintenance unless and until such funds are appropriated each fiscal year to Department by the State Legislature and made available through receipt of revenues.

23. INSPECTION

Concessionaire shall make the Concession Premises and Trails available for inspection at any time by any authorized representative of Department to assure compliance with the terms and conditions of this Agreement.

24. GARBAGE DISPOSAL, RECYCLING, AND BIODEGRADABLE MATERIALS

- A. Concessionaire shall be responsible for maintaining the cleanliness of the Concession Premises and Trails. Concessionaire shall ensure placement of all garbage and trash generated by the Concession Operation in designated containers and that said containers are emptied daily, or as more frequently required by Department, at a location within the Area designated by Department. Disposal costs from this latter location shall be borne by Department. Concessionaire shall provide such additional trash containers as may be required to keep the immediate Concession Premises and Trails clean at all times. The type of trash containers provided by Concessionaire shall be approved by Department prior to use.
- B. Concessionaire shall comply with any and all county and local recycling requirements.
- C. Any wrappings, containers, bowls, plates, cartons, or cups that are not intended for reuse must be composed of biodegradable material. Biodegradable material is defined as follows:

material capable of being broken down from a complex molecular structure into simpler gasses and organic compounds by living microorganisms..

- D. No glass containers of any kind shall be used to dispense any food and/or beverages.

25. UTILITIES

Concessionaire shall be responsible for the payment of any and all utility charges levied by a utility provider that are related to the Concession Operation for each Period of Operation of this Agreement. The Area Superintendent shall determine if utility charges for the Concession Operation can be segregated from the Non-Concession portion of the Area. If the utility charges can be segregated, Concessionaire shall be solely responsible for the transfer of such utility meter(s) to an account in its name. If the utility charges cannot be segregated, a utility payment(s) shall be made by Concessionaire to Department as additional compensation in addition to the Concession Payments under Paragraph 4. Utility payments shall be made by separate check, made payable to “**Treasurer – State of New Jersey.**” For each year of this Agreement, if utility charges for the Concession Operation cannot be segregated, Department will calculate the utility payment after usage data becomes available for the Period of Operation and notify Concessionaire of the utility payment amount and due date. Concessionaire’s failure to provide any utility payment shall constitute a material breach of this Agreement subject to Suspension of Operations and/or Termination, in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

26. SURFACE WATER USAGE

Department holds Water Use Registration #WUR190001, authorizing withdrawal of up to 100,000 gallons of water per day (gpd) and up to 3.1 million gallons of water per month (mgm) from Lake Marcia. If Department approves Snowmaking, Concessionaire will be authorized to operate under WUR #190001. In the event WUR #190001 expires, or if Concessionaire proposes to withdraw more water than is authorized by WUR #190001, Concessionaire shall be responsible for obtaining a new Water Use Registration, Water Allocation Permit (if more than 100,000 gpd will be pumped), and/or any other approvals needed for Snowmaking.

27. HISTORIC SITES COUNCIL

The Concession Premises and Trails are listed in the New Jersey Register of Historic Places and the National Register of Historic Places. Concessionaire shall at all times comply with conditions of the New Jersey Historic Sites Council in such Council's approval of Concessionaire’s plan for all Construction and Improvements on or about the Concession Premises, Trails, and/or any other part of the Area. Concessionaire shall not modify, change or deviate therefrom without first obtaining the express written approval thereof by Department and the New Jersey Historic Sites Council.

28. TAXES

- A. All taxes and property tax assessments, if any, arising out of the operation of the Concession and the use and occupancy of the Concession Premises and Trails shall be the sole responsibility of Concessionaire and shall be promptly paid by Concessionaire when due, regardless of whether such tax or assessment is assessed within or outside a Term of this Agreement. Concessionaire shall provide to Department copies of all tax or assessment notices received from any government agency, municipality or county. Payment shall remain a continuing obligation of Concessionaire after any Term of this Agreement and/or the expiration or termination of this Agreement, and Department is authorized to make a demand for payment and take any and all steps to ensure payment. Concessionaire shall furnish to Department, within ten (10) calendar days of demand therefor, proof of the payment of any such tax or assessment. Concessionaire’s failure to timely pay any tax or assessment or otherwise comply with this Subparagraph shall constitute a material breach of this Agreement subject to Suspension of Operations and/or Termination, in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

- B. Concessionaire and its subcontractor, if any, and each of their affiliates shall, for any and all Term(s) of this Agreement, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and Use Tax Act," P.L.1966, c. 30 (N.J.S.A. 54:32B-1 et. seq.) on all of their sales of tangible personal property delivered into this State. Any questions in this regard can be directed to the Division of Revenue at <https://www.state.nj.us/treasury/revenue/revencode.shtml>.

29. ADVERTISEMENT AND PROMOTION

- A. Concessionaire shall not advertise in any manner or form on or about the Concession Premises or any other part of the Area, except by means of such signs or forms of advertising as first shall be approved, in writing, by Department.
- B. Concessionaire shall, in all promotion and advertisement of the Concession and/or any scheduled event(s) at or pertaining to the Concession Operation, include that the Area is administered by the State of New Jersey, Department of Environmental Protection, State Parks, Forests & Historic Sites, State Park Service.
- C. Prior to the implementation of any and all promotion and advertisement of the Concession and/or any scheduled event(s) at or pertaining to the Concession Operation, Concessionaire shall submit, and obtain Department's written approval of, all such promotion(s) and advertisement(s).

30. CONSTRUCTION AND IMPROVEMENTS

- A. The Concession Premises and Trails are listed in the New Jersey Register of Historic Places and the National Register of Historic Places. Concessionaire shall at all times comply with conditions of the New Jersey Historic Sites Council in such Council's approval of Concessionaire's plan for all Construction and Improvements on or about the Concession Premises, Trails, and/or any other part of the Area.
- B. Concessionaire shall not affix, alter, or erect any permanent or temporary equipment, improvement, structure, building, or addition to the Concession Premises, Trails, and/or any other part of the Area without first obtaining the prior written approval of Department and the New Jersey Historic Sites Council.

31. REPORT OF INJURY

Any injury that shall occur to Concessionaire, its officers, servants, agents, employees, contractors, or invitees requiring medical intervention of which Concessionaire is notified, shall be reported to Department immediately by calling 1-877-WARN DEP (1-877-927-6337) and also reported in writing to the addresses set forth in Paragraph 50 within one (1) calendar day of the incident.

32. NEW JERSEY CONFLICT OF INTEREST LAW

The New Jersey Conflict of Interest Law, N.J.S.A. 52:13D-12 et seq. and Executive Order 189 (1988), prohibit certain actions by persons or entities which provide goods or services to any State Agency. Specifically:

- A. No Concessionaire shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such Concessionaire transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer has an interest within the meaning of N.J.S.A. 52:13D-13g.
- B. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any

Concessionaire shall be reported, in writing forthwith by Concessionaire to the Attorney General and the Executive Commission on Ethical Standards.

- C. No Concessionaire may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such Concessionaire to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.
- D. No Concessionaire shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- E. No Concessionaire shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for Concessionaire or any other person.
- F. The provisions cited above in Subparagraphs 32(A) through 32(E) shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with Concessionaire under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate.

33. SOLICITATION

Concessionaire warrants that no person has been employed directly or indirectly to solicit or secure this Agreement in violation of the provision of Section 10, Chapter 48 of the Laws of 1954, N.J.S.A. 52:34-15, and that the Laws of the State of New Jersey relating to the procurement or performance of this Agreement have not been violated and shall not be violated by any conduct of Concessionaire, including the paying or giving directly or indirectly of any fee, commission, compensation, gift, gratuity, or consideration of any kind to any State employee, officer, or official.

34. INDEPENDENT PRINCIPAL

Concessionaire's status shall be that of an independent principal and not as an agent or employee of Department.

35. INDEMNIFICATION

- A. Concessionaire shall, for itself, its successors, and assigns, assume all risk and liabilities arising out of the management, maintenance, and operation of the Concession and covenants to defend, protect, indemnify, and save harmless Department and each and every of its officers, agents, servants, employees, successors, and assignees and hereby releases Department and each and every of its officers, agents, servants, employees, successors, and assignees from and against any and all such liabilities, losses, damages, costs, expenses (including all attorneys' fees and expenses), causes of action, suits, claims, demands, or judgments of any nature arising from the following:
 - (i) any injury to, or the death of, any person caused in whole or in part by any negligent act or omission of Concessionaire, or anyone directly or indirectly employed by [it], *regardless of whether it is caused in part by the*

Department, or its officers, agents, servants, employees, successors, and assignees;

- (ii) any injury to, or the death of, any person in, on, or about, or any damage to property which occurs in, on, or about the Concession Premises and/or Trails, or upon any sidewalk, walkway, or patio within the Concession Premises or in any manner growing out of or connected with the use, non-use, condition, or occupancy of the Concession Premises and/or Trails, or the construction or repair of any improvements of the Concession Premises and/or Trails;
 - (iii) any act, error, or omission of Concessionaire, its officers, agents, servants, employees, contractors, invitees, and anyone claiming by or through Concessionaire in the performance of this Agreement;
 - (iv) violation of any term or condition of this Agreement by Concessionaire, its officers, agents, servants, employees, contractors, invitees, and anyone claiming by or through Concessionaire in the performance of this Agreement; and
 - (v) violation by Concessionaire, its officers, agents, servants, employees, contractors, invitees, and anyone claiming by or through Concessionaire in the performance of this Agreement of any contracts and agreements of record concerning the Concession Premises and/or Trails and restrictions of record or any law, ordinance, or regulation affecting the Concession Premises and/or Trails or any part thereof or the ownership, occupancy, or use thereof.
- B. Department shall, as soon as practicable after a claim has been made against it, give written notice thereof to Concessionaire, along with full and complete particulars of the claim. If suit is brought against Department or any of its officers, agents, servants, and/or employees, Department shall expeditiously forward or have forwarded to Concessionaire every demand, complaint, notice, summons, pleading, or other document received by or then in the possession of Department or its representatives.
- C. It is expressly agreed and understood that any approval by Department of Concessionaire's Operation shall not operate to limit the obligations of Concessionaire assumed pursuant to this Agreement.
- D. Concessionaire's liability pursuant to this Paragraph shall continue after the termination or expiration of this Agreement with respect to any liability, loss, cost, expense (including all attorneys' fees and expenses), damage, cause of action, suit, claim, demand, or judgment resulting from actions or inactions occurring prior to such termination or expiration.
- E. Concessionaire's indemnification obligations are not limited by, but are in addition to, the insurance obligations contained in this Agreement.

36. INSURANCE

- A. Concessionaire shall, at its sole cost and expense, obtain and maintain at all times during each Term of this Agreement, insurance of the types and in the amounts hereinafter provided:
- (i) Commercial General Liability Insurance as broad as that provided by the standard basic, unamended, and unendorsed occurrence coverage forms currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage. Limits of liability shall be maintained at the level of One Million (\$1,000,000) Dollars per occurrence for bodily injury and property damage and a Two Million (\$2,000,000) Dollars annual aggregate. This can be accomplished with a combination of Commercial General Liability and Commercial Umbrella policies; and
 - (ii) Property insurance to cover loss or damage on a "Special Causes of Loss" form of coverage against fire, water, wind, storm, loss, theft, and damage on any structures on the Concession Premises and all fixtures, equipment, and

other property attached thereto and/or physically incorporated therein and the contents owned by Concessionaire and located in or on the Concession Premises. Said insurance shall be in an amount not less than the full value of such structures, fixtures, equipment, property, and contents. The value of said structures, fixtures, equipment, property, and contents shall be determined by Concessionaire using whatever procedures Concessionaire considers appropriate. Said policy shall be written so as to provide that the insurer waives all right of subrogation against Department in connection with any loss or damage covered by the policy; and

- (iii) Worker's Compensation Insurance applicable to the Laws of the State of New Jersey and Employer's Liability Insurance with limits of not less than One Million (\$1,000,000) Dollars Bodily Injury By Accident (Each Accident) and One Million (\$1,000,000) Dollars Bodily Injury By Disease (Each Employee) with an aggregate limit of One Million (\$1,000,000) Dollars Bodily Injury By Disease (Policy Limit); and
 - (iv) Comprehensive Automobile Liability Insurance, which shall be written to cover any automobile or trailer used by Concessionaire. Limits of liability to cover bodily injury and property damage shall not be less than One Million (\$1,000,000) Dollars per person or per accident. Coverage must include hired and non-owned vehicles. A MCS-90 certificate shall be filed with the State of New Jersey if hazardous materials or waste will be transported during operation of the Concession; and
 - (v) Such other insurance and in such amounts as may from time to time be reasonably required by Department.
- B. All insurance coverage required to be maintained by Concessionaire in accordance with this Agreement shall be issued by an insurance company with an A- VIII or better rating by A.M. Best & Company authorized and approved to do business in New Jersey. All policies except for Worker's Compensation shall name the State of New Jersey Department of Environmental Protection as an additional insured and include the blanket additional insured endorsement or its equivalent. The certificate(s) of insurance shall identify the Concession Number assigned to this Agreement and the location(s) of the Concession Premises and Trails in the Description of Operations box and shall list the State of New Jersey, Department of Environmental Protection; Office of Transactions and Public Land Administration; Public Land Administration Section; P.O. Box 420, Mail Code: 401-07, Trenton, New Jersey 08625-0420 in the Certificate Holder box.
- C. When Concessionaire returns this Agreement or any subsequent Renewal Agreement, signed by Concessionaire, to Department for signature, Concessionaire shall provide Department with all current and valid certificate(s) of insurance evidencing that Concessionaire has obtained all insurance coverage in accordance with this Agreement. Failure to provide a certificate(s) of insurance at the time of Concessionaire's return of this Agreement or any subsequent Renewal Agreement shall result in the non-execution of this Agreement or subsequent Renewal Agreement by Department, as applicable. Concessionaire also shall provide Department with a valid certificate(s) of renewal of the insurance within thirty (30) calendar days of the expiration of the policies so that Department is continuously in possession of current documentation that Concessionaire has obtained and is maintaining, in full force and effect, all insurance required under this Agreement. Concessionaire also shall, upon request, provide Department with copies of each policy required under this Agreement, certified by the agency or underwriter to be true copies of the policies provided by Concessionaire.
- D. Concessionaire expressly understands and agrees that any insurance protection required by this Agreement shall in no way limit Concessionaire's indemnification obligations assumed in this Agreement and shall not be construed to relieve Concessionaire from liability in excess of such insurance coverage, nor shall it preclude Department from taking such other actions as are available to it under any provision of this Agreement and as otherwise provided for at law or in equity.

- E. In the event that: (i) Concessionaire fails or refuses to renew any of its insurance policies or to provide Department with timely certificate(s) of insurance showing that Concessionaire is maintaining insurance coverage in full force and effect to the extent required by this Agreement, or (ii) any policy is canceled, terminated, or modified so that the insurance does not meet the requirements of this Agreement, Department shall consider Concessionaire to be in material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.
- F. The limits of insurance policies described in this Paragraph shall be reviewed by Department and Concessionaire from time to time. Concessionaire shall increase the limits of said policies to meet changed circumstances including, but not limited to, changes in the relevant U.S. Bureau of Labor Statistics Consumer Price Index and changes indicated by the course of plaintiffs' verdicts in personal injury actions.

37. COMPLIANCE WITH LAWS, LICENSES, PERMITS, AND INSURANCE POLICIES

- A. For each Term of this Agreement, Concessionaire shall obtain, pay for, maintain, and comply with all licenses, permits, certifications, authorizations, approvals, or any other documents required by all applicable government agencies having jurisdiction over the Concession Premises and Trails or the conduct of Concessionaire's operations thereon. Concessionaire shall provide Department with written evidence that such applicable licenses, permits, authorizations, or other required documents have been obtained prior to commencement of the activity or operation covered by the license, permit, authorization, or other documentation. No operation shall begin until Concessionaire has provided such written evidence to Department.
- B. Concessionaire shall, at its sole cost and expense, comply with all duly promulgated and applicable federal and State statutes, laws, rules, ordinances, regulations, and orders affecting the conduct of the Concession Operation described in this Agreement; specifically, but not limited to, N.J.A.C. 7:5A-1.1 et seq., Natural Areas and the Natural Areas System Rules, of which an unofficial courtesy copy is attached as Exhibit G, and all rules and regulations of the New Jersey Department of Health now or hereafter in effect, as well as those rules and regulations of any other agency with jurisdiction over the preparation and sale of prepackaged food and beverages.
- C. Concessionaire shall comply with the requirements of all insurance policies required by this Agreement.
- D. If Concessionaire:
 - (i) receives a notice of failure to comply with the insurance required by this Agreement;
 - (ii) is issued a summons or any notice of violation of any license, permit, certification, authorization, approval, or any similar instruments required by any governmental authority having jurisdiction necessary to maintain and operate the Concession in accordance with the provisions of this Agreement; or
 - (iii) is issued a summons for violation of any duly promulgated and applicable federal, State, county, municipal, and other governmental statutes, laws, rules, ordinances, regulations, or orders affecting the Concession Operation or any part thereof,

Concessionaire shall immediately forward a copy of the notice of non-compliance, summons, or notice of violation to Department, and Concessionaire shall have such amount of time to correct said violation as is prescribed in the notice or summons. If such violation is not cured within the prescribed period or any extension thereof, it shall be deemed a material breach of this Agreement, and Department may suspend Concessionaire's operation of all or the affected portion of the Concession Premises and/or Trails in accordance with the terms and conditions

set forth in Paragraph 9, and/or terminate this Agreement in accordance with the terms and conditions set forth in Paragraph 10.

- E. Concessionaire shall indemnify Department against all liabilities, claims, losses, damages, costs, expenses (including all attorneys' fees and expenses), causes of action, suits, demands, judgments, or payments of any kind arising from Concessionaire's failure or omission to comply with any such insurance policy, license, permit, certification, authorization, approval, or any applicable federal or State statute, law, rule, ordinance, regulation, or order.

38. SERVICE PERFORMANCE WITHIN U.S.

Concessionaire agrees, in accordance with Executive Order 129 (2004) and N.J.S.A. 52:34-13.2 (P.L. 2005, c. 92), that all services performed under this Agreement or any subcontract awarded under this Agreement shall be performed within the United States. In the event that any services performed under this Agreement or any subcontract awarded under this Agreement will not be performed within the United States, Concessionaire shall send Department a letter that states with specificity the reasons why the services cannot be so performed. Any such letter shall require review and approval pursuant to N.J.S.A. 52:34-13.2 prior to execution of this Agreement or the delivery of the services which will not be performed within the United States. Unless previously approved by Department, a shift to performance of services outside the United States during any Term of this Agreement shall be deemed a material breach, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

39. PUBLIC USE

Concessionaire's operation and this Agreement shall not be construed so as to affect the privileges accorded to the public's use of the Area, or to restrain or prevent individual persons or groups of persons from bringing their own recreational equipment, food and beverages into the Area. However, Concessionaire shall be granted the exclusive right to charge patrons a fee for use of the Department-designated Trails set forth in Exhibit B.

40. NO DISCRIMINATION

- A. Concessionaire shall comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101, et seq.
- B. Concessionaire shall not discriminate, and shall abide by all anti-discrimination laws, including Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d-2000d-4; the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4; the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.; N.J.S.A. 10:5-31 through N.J.S.A. 10:5-38; and all rules and regulations promulgated pursuant thereto.
- C. Specifically, Concessionaire shall not unlawfully discriminate: 1) against any person, employee, or applicant for employment, or 2) in allowing access to and use of the Concession Premises and Trails.

41. AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT REQUIREMENTS

- A. Pursuant to N.J.A.C. 17:27-3.5, Concessionaire agrees that:
- (i) Concessionaire or its subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Concessionaire will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that all employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment

advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Concessionaire agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the public agency compliance officer setting forth provisions of this nondiscrimination clause;

- (ii) Concessionaire or its subcontractor, where applicable, shall, in all solicitations or advertisements for employees placed by or on behalf of Concessionaire, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
- (iii) Concessionaire or its subcontractor, where applicable, shall send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of Concessionaire's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment; and
- (iv) Concessionaire or its subcontractor, where applicable, agrees to comply with all regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time, and codified at N.J.A.C. 17:27-1.1 et seq.

B. Further, pursuant to N.J.A.C. 17:27-3.7, Concessionaire agrees that:

- (i) Concessionaire and its subcontractor, if any, agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.
- (ii) Concessionaire and its subcontractor, if any, agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
- (iii) Concessionaire and its subcontractor, if any, agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
- (iv) In conforming with the targeted employment goals, Concessionaire and its subcontractor, if any, agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

42. **PAYMENT ABATEMENT**

Concessionaire acknowledges that the Area is subject to unscheduled closures for reasons of health, public welfare, public safety, and government closures. These closures may result from inclement weather, staffing, emergencies, or other causes. Payment abatements will not be given if Concessionaire is unable to operate the Concession for any reason, or if

Concessionaire temporarily closes the Concession with Area Superintendent approval pursuant to Paragraph 6(D).

43. FINAL DECISION

Concessionaire covenants that the decision of the Commissioner of Department, relative to the bidding process and/or award of this Agreement, as well as the performance of the terms and conditions of this Agreement, shall be final and conclusive.

44. CORPORATION

- A. For any Concessionaire that presents itself or represents itself as a corporation operating or doing business in the State of New Jersey, all papers of incorporation, including authorized agents for receipt of legal documents, shall be provided to Department, along with renewals, changes, or any other documents that in any way affect the current or future status of Concessionaire as a legal corporation.
- B. Concessionaire shall adopt the required corporate or partnership resolution, as applicable, authorizing the execution of this Agreement by Concessionaire. Concessionaire shall submit a copy of said resolution to Department prior to execution of this Agreement by Department.
- C. Prior to the Effective Date of this Agreement, Concessionaire shall provide Department with a completed Ownership Disclosure Form pursuant to N.J.S.A. 52:25-24.2.

45. SUBCONTRACTING

- A. Concessionaire may not subcontract without the prior written consent of Department. Such consent, if granted, shall not relieve Concessionaire of any of its responsibilities under this Agreement, nor shall it create privity of contract between Department and any subcontractor. If Concessionaire uses a subcontractor to fulfill any of its obligations, Concessionaire shall be responsible for the subcontractor's performance, compliance with all of the terms and conditions of this Agreement, and compliance with the requirements of all applicable laws. Any subcontracting without the prior written consent of Department shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.
- B. If subcontracting is approved pursuant to Subparagraph 45(A), Concessionaire shall provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business, minority or woman-owned subcontractor(s). This breakdown shall be sent to the Chief of Operations, Division of Revenue, P.O. Box 628, Trenton, NJ 08646.

46. NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND DEPARTMENT

Nothing contained in any Agreement documents, including the Bid Specifications and Concessionaire's bid or proposal for this Agreement, shall be construed as creating any contractual relationship between any subcontractor and Department.

47. ASSIGNMENT OF AGREEMENT OR SALE OF INTERESTS

Concessionaire shall not assign this Agreement or sell controlling interest in the Concession without prior written approval from Department. Any attempt to assign or sell controlling interest without prior written approval from Department shall be a material breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

48. PAY TO PLAY RESTRICTIONS AND CONTRIBUTION DISCLOSURE

- A. In order to safeguard the integrity of State government procurement by imposing restrictions to insulate the negotiation and award of State contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, the Legislature

has enacted P.L. 2005, c. 51, as amended by the Elections Transparency Act, P.L. 2023, c. 30 (codified at N.J.S.A. 19:44A-20.13 to -20.25) (Chapter 51) on March 22, 2005, effective retroactive to October 15, 2004, superseding the terms of Executive Order 134 (2004). In addition, on June 15, 2023, Executive Order 333 was issued and made effective immediately (EO 333) which superseded Executive Order 117 and set forth additional limitations on the ability of executive branch agencies to contract with business entities that have made or solicited certain contributions.

Chapter 51 and EO 333 restrict business entities which agree to certain contracts or agreements with the State from making or soliciting certain contributions. Compliance with Chapter 51 and EO 333 is a material term and condition of the Bid Specifications and Agreement, and binding upon the parties thereto upon the entry of all applicable contracts.

Thus, pursuant to the requirements of Chapter 51 and EO 333, it shall be a material breach of the terms of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10, for Concessionaire to do any of the following during any Term of this Agreement:

- (i) make or solicit a contribution in violation of Chapter 51 or EO 333;
- (ii) knowingly conceal or misrepresent a contribution given or received;
- (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- (iv) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or of Lieutenant Governor;
- (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by Concessionaire itself, would subject Concessionaire to the restrictions of Chapter 51 or EO 333;
- (vi) fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- (vii) engage in any exchange or contributions to circumvent the intent of Chapter 51 or EO 333; or
- (viii) directly or indirectly, through or by any other person or means, do any act which would subject Concessionaire to the restrictions of Chapter 51 or EO 333. It is Concessionaire's continuing obligation to report any contributions it makes during any and all Term(s) of this Agreement.

B. Concessionaire is required, on a continuing basis, to report any contributions and solicitations Concessionaire makes during any Term of this Agreement at the time any such contribution or solicitation is made. Failure to do so is a breach of this Agreement, subject to Suspension of Operations and/or Termination in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

C. Concessionaire shall file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC) pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, section 2) if Concessionaire receives contracts in excess of Fifty Thousand (\$50,000.00) dollars from public entities in a calendar year. It is Concessionaire's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.

49. **NEW JERSEY BUSINESS REGISTRATION**

Concessionaire must maintain a valid New Jersey business registration during each Term of this Agreement. Failure to maintain a valid New Jersey business registration during each Term of this Agreement is a material breach of this Agreement, subject to Suspension of Operations and/or Revocation in accordance with the terms and conditions set forth in Paragraphs 9 and 10.

50. **SUBMISSIONS, APPROVALS, AND NOTICES**

Department and Concessionaire agree that all submissions, approvals, and notices which may be required under this Agreement shall be sent by email. Additional copies of submissions, approvals, and notices may also be sent by regular and/or certified mail return receipt requested and addressed as follows:

- To Department:

Department of Environmental Protection
Office of Transactions and Public Land Administration
Public Land Administration Section
PO Box 420, Mail Code 401-07
Trenton, New Jersey 08625-0420
Email: PublicLandAdministration@dep.nj.gov
- Copy to Area Superintendent:

High Point State Park
1480 State Route 23
Sussex, New Jersey 07461-3605
Email: Laura.Franek@dep.nj.gov
- To Concessionaire:

Name
Title and/or Entity Designation
Street Address
Town, NJ Zip Code
Email:

Either Department or Concessionaire may, at any time, change such address(es) by emailing or mailing, to the address(es) of the other, above, a notice of the change at least ten (10) calendar days prior to the effective date of such change.

51. **RECEIPT OF WRITTEN NOTICE**

Department and Concessionaire agree that any written notice submitted pursuant to this Agreement is considered received five (5) calendar days after mailing.

52. **PREFERENCE FOR WOOD, PAPER PRODUCTS DERIVED FROM SUSTAINABLY-MANAGED FORESTS OR PROCUREMENT SYSTEMS**

Pursuant to N.J.S.A. 52:32-45, any bid that calls for the use of wood or paper products derived from sustainably managed forests or procurement systems shall receive preference, whenever possible, where relevant. Accordingly, Department shall give such preference when entering into or renewing this Agreement, whenever possible, where relevant.

53. **PREVAILING WAGE ACT**

Without limiting the scope of any other provision of this Agreement, Concessionaire agrees to comply with the New Jersey Prevailing Wage Act, P.L. 1963, Chapter 150as codified in N.J.S.A. 34:11-56.25, et seq. Concessionaire also agrees to comply with 42 U.S.C. § 9604 (g)(1). If any conflict exists between the New Jersey Prevailing Wage Law and § 9604 (g)(1), the Concessionaire must comply with the federal requirements.

54. HAZARDOUS SUBSTANCES

At no time during this Agreement shall Concessionaire transport or store, within the Area, hazardous substances as that term may be defined by the New Jersey Department of Environmental Protection (see N.J.S.A. 58:10-23.11(b)) or by the federal Environmental Protection Agency pursuant to section 311 of the “Federal Water Pollution Act, amendments of 1972” (33 U.S.C. 1321; see also 40 C.F.R. 302.3) and the list of toxic pollutants designated by Congress or the Environmental Protection Agency pursuant to section 307 of that Act (33 U.S.C. 1317; see also 40 C.F.R. 401.15).

55. BANKRUPTCY

In the event Concessionaire enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Concessionaire agrees to furnish written notification of the bankruptcy to Department with a copy to the Attorney General’s Office. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and the name(s), addresses, and telephone numbers of the attorney or firm handling the bankruptcy. The obligation to report entering into any such proceedings remains in effect until final payment is made under this Agreement. The Department shall have the right to revoke this Agreement immediately upon receipt of a notice of bankruptcy by providing written notice to Concessionaire.

56. NOT A LEASE

It is expressly understood and agreed by both Department and Concessionaire that no building, land or equipment included within the description of the Concession Premises or any other property comprising part of the Area is hereby leased to Concessionaire. Department's control, management and direction over the Concession Premises or any other property comprising part of the Area are not hereby assigned in any way to Concessionaire.

57. ENTIRE AGREEMENT

- A. This Agreement represents the entire agreement between Department and Concessionaire, and all negotiations, oral agreements, and understandings are merged herein. This Agreement may be amended, supplemented, changed, modified, or altered only upon mutual agreement of Department and Concessionaire, and an amendment, in writing, executed by the Assistant Commissioner of State Parks, Forests & Historic Sites.
- B. This Agreement shall be construed as if it were drafted by both Parties hereto, and both Parties waive all statutory and common law presumptions which would serve to have the document construed in favor of, or against, any Party as the drafter hereof. This Agreement contains the entire understanding of the Parties hereto and represents full and final settlement of and resolution of the matter set forth herein. There are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

58. WAIVER OF TRIAL

It is mutually agreed between Department and Concessionaire that they hereby waive trial by jury in any action, proceeding, or counterclaim brought by either against the other on any matters whatsoever arising out of or in any way connected with this Agreement or the relationship of Department and Concessionaire, Concessionaire’s use or occupancy of the Concession Premises, and/or any claim of injury or damage thereto or arising therefrom.

59. WAIVER

Failure by Department to complain of any act or omission on the part of the other, no matter how long same may continue, shall not be deemed a waiver by Department of any of its rights hereunder. No waiver by Department at any time, express or implied, of breach of any provision of this Agreement shall be deemed a waiver of breach of any other provision or a consent to any subsequent breach of the same or any other provision. The consent to or approval of any action on any one occasion by Department shall not be deemed a consent to

or approval of any other action on the same or any subsequent occasion. Any and all rights and remedies that Department may have under this Agreement or by operation of law, either at law or in equity, by reason of a breach by the other, shall be distinct, separate, and cumulative and shall not be deemed inconsistent with any other right or remedy, and any two (2) or more or all of such rights and remedies may be exercised at the same time. Acceptance by Department of any of the benefits of this Agreement with knowledge of any breach thereof by the other shall not be deemed a waiver by the entity receiving the benefit of any rights or remedies to which it is entitled hereunder or by law. Concessionaire expressly acknowledges that any waiver on the part of Department may only be effectuated in writing through the Office of the Assistant Commissioner for State Parks, Forests & Historic Sites.

60. SUPERSEDES

This Agreement supersedes and cancels all prior licenses and agreements covering the Concession Premises; however, any and all continuing obligations arising under prior agreements shall survive.

61. SUCCESSION AND BINDING AGREEMENT

Except as otherwise set forth herein, all of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the successors and assignees of Department and Concessionaire and binding on a Trustee in bankruptcy.

62. HEADINGS

The article, paragraph, and subparagraph headings throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

63. GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the Laws of the State of New Jersey.

64. SEVERABILITY

In case any term or provision of this contract shall be held invalid, illegal, or unenforceable, in whole or in part, neither the validity of any remaining part nor the validity of any other term or provision shall in any way be affected by such holding.

65. CLAIMS

All claims asserted against Department by Concessionaire shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1.1, et seq. and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

66. ASSIGNMENT OF ANTITRUST CLAIM(S)

- A. Concessionaire recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this Agreement, Concessionaire, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this Agreement.
- B. In connection with this assignment, the following are the express obligations of Concessionaire:

- (i) It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder.
- (ii) It shall advise the Attorney General of New Jersey in advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action, and immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
- (iii) It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after Concessionaire has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey.
- (iv) It is understood and agreed that in the event any payment under any such claim or cause of action is made to Concessionaire, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

67. MACBRIDE PRINCIPLES AND IRANIAN INVESTMENTS

- A. Concessionaire certifies pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.
- B. In addition, Concessionaire certifies that neither the Concessionaire nor any of the Concessionaire's parents, subsidiaries, or affiliates is listed on the N.J. Department of the Treasury's list of entities determined to be engaged in prohibited activities in Iran pursuant to N.J.S.A. 52:32-57.

68. DISCLOSURE OF PROHIBITED ACTIVITIES WITH RUSSIA OR BELARUS

Pursuant to N.J.S.A. 52:32-60.1 et seq. (P.L. 2022, c.3), a person or entity seeking to enter into or renew a contract for the provision of goods or services shall certify that it is not identified on the list of persons or entities engaging in prohibited activities in Russia or Belarus. Consistent with the federal law, the list of persons and entities engaging in prohibited activities in Russia or Belarus shall consist of all persons and entities appearing on the list of Specially Designated Nationals and Blocked Persons promulgated by the Office of Foreign Assets Control (OFAC) on account of activity relating to Russia or Belarus.

69. AUTHORITY

By the signatures below, the parties hereto execute this Agreement and confirm that they are mutually bound by and fully authorized and empowered to enter into and bind their organization by all provisions contained herein.

70. LIST OF EXHIBITS

- Exhibit A: Concession Premises
- Exhibit B: Trails and Dryden Kuser Natural Area
- Exhibit C: Dryden Kuser Natural Area Snowmaking Area
- Exhibit D: Public Parking Areas
- Exhibit E: Dryden Kuser Natural Area Management Plan and Notices of Amendment
- Exhibit F: Concession Payment Schedule
- Exhibit G: N.J.A.C. 7:5A, Natural Areas and the Natural Areas System Rules

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement the day and year first above written.

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____

John Cecil, Assistant Commissioner
State Parks, Forests & Historic Sites

Date: _____

CONCESSIONAIRE

By: _____

Witness

By: _____

_____, Concessionaire

Date: _____

Date: _____

THIS CONCESSION AGREEMENT HAS BEEN
REVIEWED AND APPROVED AS TO
FORM BY:

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: _____

Deputy Attorney General

Date: _____